

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

MATTHEW SILVA,

Plaintiff,

v.

JOSEPH WOODS,

Defendant.

CASE NO. C05-471RSM

ORDER ADOPTING REPORT AND  
RECOMMENDATION

This matter is before the Court for consideration of the Report and Recommendation ("R & R") filed by the Hon. James Donohue, United States Magistrate Judge, on August 21, 2006. Plaintiff has filed objections to R & R, which the Court finds to be without merit. For the reasons stated below, the Court shall adopt the R & R, grant defendant's motion for summary judgment, and dismiss the action.

BACKGROUND AND DISCUSSION

Plaintiff Matthew Silva, appearing *pro se* and *in forma pauperis*, filed this civil rights action pursuant to 42 U.S.C. § 1983, alleging that his Fourth Amendment rights were violated by a search incident to arrest. The gravamen of plaintiff's complaint is that the arresting officer could not possibly have had time to run a check on his license plate prior to stopping him, and that therefore the traffic stop, and ensuing arrest on an outstanding felony warrant, were illegal.

ORDER ADOPTING REPORT AND  
RECOMMENDATION - 1

1 One month after answering the complaint, defendant filed a motion for summary judgment on the  
2 basis of qualified immunity of the arresting officer. Dkt. # 14. Plaintiff filed a response and cross-  
3 motion, together with a motion for a continuance of the hearing date. Dkt. # 18, # 20. The following  
4 day, defendant filed a motion for extension of the discovery deadline. Dkt. # 22. The Court granted the  
5 requested extensions and re-noted both defendant's summary judgment motion and plaintiff's cross-  
6 motion. Dkt. # 26. Two months later, the motions were again re-noted to allow more time for  
7 discovery. Dkt. # 37. Plaintiff then filed a motion for issuance of subpoenas and for a further extension  
8 of the time for discovery. Dkt. # 39. In granting plaintiff's motion, the Court struck the pending motion  
9 for summary judgment and plaintiff's response and cross-motion. Dkt. # 41.

10 Four months later, on May 4, 2006, defendant filed a new motion for summary judgment, again  
11 asserting qualified immunity. The motion was noted for consideration on June 2, 2006. Dkt. # 55.  
12 During May, June, and July, plaintiff filed numerous motions, declarations, and objections to Court  
13 orders, but not one of them was designated as a response to the summary judgment motion, or a request  
14 for additional time to respond. Dkt. ## 59, 60, 61, 62, 65, 66, 69, 70, 77, 78, 81, 82, 83, 84, 85, 86, 87.

15 On August 21, 2006, Magistrate Judge Donohue filed his Report and Recommendation,  
16 recommending that defendant's motion for summary judgment be granted. In his well-reasoned R & R,  
17 the Magistrate Judge noted that plaintiff had failed to file any response to the summary judgment motion,  
18 and addressed the motion on its merits as well. On the basis of defendant's declaration, the Magistrate  
19 Judge concluded that defendant, the arresting officer, had a reasonable belief that plaintiff had violated  
20 the law, and a well-founded basis for initiating the traffic stop. He is therefore entitled to qualified  
21 immunity from suit. *Saucier v. Katz*, 533 U.S. 194 (2001).

22 In objecting to the R & R, plaintiff claims that the Magistrate Judge mischaracterized the record  
23 and should have considered his response to the earlier summary judgment motion. He also incorrectly  
24 asserts that this earlier motion and his response were never stricken. These objections are factually  
25 incorrect and without merit. Even if the Magistrate Judge had considered the stricken response, he  
26 would have found no actual evidence therein to controvert the facts stated in defendant's declaration.

1 Accordingly, the Court hereby Orders:

2 (1) The Report and Recommendation is approved and adopted;

3 (2) Defendant's motion for summary judgment is GRANTED and this action is DISMISSED; and

4 (3) The Clerk shall direct copies of this order to plaintiff, to counsel for defendant, and to the  
5 Honorable James P. Donohue.

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7 Dated this \_\_2\_\_ day of October, 2006.

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10 RICARDO S. MARTINEZ  
11 UNITED STATES DISTRICT JUDGE  
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